Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

NO.____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1997

BERMAN J. WATTS,

Petitioner,

VS

TOGO D. WEST, Secretary of the Army; DEPARTMENT OF THE ARMY, Headquarters United States Army Aviation Center and Ft. Rucker,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

Berman J. Watts, Jr.
P.O. Box 82123
Atlanta, Georgia
30354
(404) 622-3195

Petitioner Pro Se

51PP

QUESTIONS PRESENTED

I. Whether equal protection of law is denied by Government's differential response to evidence of obstruction of justice by government officials.

a. The Independent Counsel Act promotes violation of the equal protection and due process clause of the fifth and fourteenth Amendment's to the Constitution.

b. Such act permits inequity destructive of the appearance of justice and expressed congressional intent.

II. Whether denial of Federal Rule of Civil Procedure Rule 60(b) motion for relief from judgment despite newly discovered and incontrovertible evidence of fraud upon the court is an abuse of discretion?

a. The court failed to consider a factor that should have been given significant weight.

b.The court considers and gives significant weight to an improper or irrelevant factor.

c. The court fails to recognize it's capacity to exercise discretion or did not purport to exercise it.

LIST OF PARTIES

United States District Court Judge

Orinda D. Evans

Lt. Gen. Ellis D. Parker,
formerly Commander Ft. Rucker
COL. Donald J.Marnon
Garrison Commander subsequently
retired as City Mgr- Dothan, AL.

Merit Systems Protection Board.
MSPB Office MSPB Office of the
Special Counsel*.
EEOC,EEOCORA.
United States Army Civilian
Appellate Review Agency.
M. Cunningham, Administrative
Law Judge
David M. Smith, Chief U.S. Army
Litigation Civilian Employment
Branch, formerly Labor Counselor
at Ft. Rucker
Amy Frisk
David Allred, Asst. U.S.
Attorney
John Elder Wilson, U.S.
Attorney Montgomery, AL
Plain King, present Labor
Counselor at Ft. Rucker.
F.H. Mayer, then Director of the
Directorate of Combat
Developments at Ft. Rucker since
retired.
C.H. Jacobus; Former Commander
LHX Division of The
Directorate of Combat

Developments subsequently
retired and employed by
Bell Helicopter Textron
during it's bid on the LHX

C.M. Waldran, Manager LHX
Division , Directorate of Combat
Developments fiormerly with
the U.S. Army Missle COmmand
C.F. Auman, EEO
Officer,Ft.Rucker
J.B. Truss, MP
Charles Blakely, Supervisor,ORSA
DCD
Ronald D. Pfeiffer, a Supervisor
in DCD Ft. Rucker.
Ralph C. Fico, Aero Engineer DCD
R. Steele, Aero Engineer
Aircraft Development and Test
subsequently resigned and
employed by Bell Helicopter
Textron.
LTC. Sheehy Supervisor, Aircraft
Development and Test Activity
R. Wagg, President Army Aviation
Board (1982-84)

Employees and Staff

Directorate of Combat
Developments
Directorate of Engineering and
Housing
Army Aviation Center
Ft. Rucker, Alabama

Army Aviation Center
Ft. Rucker, Alabama

Bell Helicopter Textron; bidder
on LHX(Commanche)
and subsequent employer of

C.H. Jacobus as analyst

Individuals and/or Entities
having access to
suggestions made by Appellant
and subsequently
receiving award or implementing
suggestion.

Decision Making/Investigative
Agencies Involved.

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NO.____

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1997

BERMAN J. WATTS.,

Petitioner,

VS

TOGO D. WEST., Secretary of the Army; DEPARTMENT OF THE ARMY, Headquarters United States Army Aviation Center and Ft. Rucker,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

The petitioner Berman J. Watts, Jr. respectfully requests that a Writ of Certiorari issue to review the order

and opinion of the Eleventh Circuit entered in the above entitled proceeding on June 11, 1997.

OPINIONS BELOW

The Eleventh Circuit's opinion has not been reported. A copy of that opinion is set forth in the appendix hereto beginning at page AP-1.

JURISDICTION

Jurisdiction of the district court was invoked as follows:
1.pursuant to *Fed. R. of Civ. P. 60(b)* for fraud upon the court resulting in the denial of due process in a prior Title VII case against the U.S. Army.

The Northern District Federal Court of Georgia was where federal jurisdiction was invoked:summary judgment for respondent granted and of the subject

July 19,1996 Rule 60 (b) motion denial.

On appeal,invoking Title 28 §§1291,1292 jurisdiction the Eleventh Circuit issued an order affirming the denial of the Rule 60(b) motion on June 11,1997 and finding that the District Court did not abuse it's discretion in such denial. Timely Petition for Rehearing and Suggestion for Rehearing en Banc were filed and subsequently denied on January 22,1998.

The jurisdiction of this court to review the lower court is invoked under 28 U.S.C. §1254 (1).

STATUTES INVOLVED

Amendment I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of press, or the right of the people to peacefully assemble, *and to petition Government for a redress of grievances*.

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime , unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; .....

nor be deprived of life liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. *No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States: nor shall any State deprive any person of life liberty, or property , without due process of law; or deny to any person within its jurisdiction the equal protection of the laws.*

Supreme Court Rule 10 (a) provides that a Writ of Certiorari may be granted:

(a) When a federal court of appeals has rendered a decision in conflict with the decision of another federal court of appeals on the same matter....or has so far departed from the accepted and usual course of judicial proceedings, or so far

sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

STATEMENT OF THE CASE

Summary

The Eleventh Circuit Court of Appeals' affirmation of a district court denial of a Fed R. Civ. P 60 (b) motion for relief from judgment is the immediate cause of this petition.

A Rule 60(b) independent action for relief from judgment was entered upon discovery that a telephonic deposition (initiated by the Secretary's counsel as noted in such deposition) entered and accepted in lieu of court appearance was falsified. The original District court decision (M.D. AL) cited and used the "facts" of such deposition in it's elimination of the inference of discrimination in a Title VII decision.

The underlying prior cause is a Title

VII (42 U.S.C.2000e,1983,1981) complaint originally filed in Feb. 1991 on a EEOC right to sue received less than one month before. Such right to sue concerned matters occurring prior to dismissal against Watts as the only black Aerospace Engineer and thus one of a few blacks above a particular pay level on post. Such dismissal was the subject of *Watts v. Marsh* Civil Action No. 87-T-804 (Middle District AL. 1988). The Army delayed processing of charges pending prior to dismissal, thus enabling incident staged with a plurality of hostile armed witnesses primed by false claims of Watts prior violence and the circulated and then unknown to Watts claims that in mutating gossip like versions; 1) on a paper that fell from

his pocket;

2) was written in a magazine in the technical library he was suspected of reading, were the words "white women need to be raped by black men".

Such subsequent confrontation staged in a remote and deserted area served as excuse for dismissal prior to any processing of some then pending six employment discrimination/retaliation complaints. An initial complaint on the standard practice of falsely underrating the performance of capable blacks as reason for dismissal had, before an EEOC Complaint's examiner resulted in correction of ratings. Subsequent efforts were more subtle yet elaborate, resulting in accusations and staged incident only after every performance

challenge, i.e.; impossible goals; direction to do work in a manner that would be unproductive or impossible, etc, were met by the successful plan and accomplishment or Watts' actions to complete such task was obviously going to be successful.

An intial dismissal resulted in reinsatement upon MSPB (Admin.-Mixed) appeal.

By final staged incident and second dismissal was complaint on such series of actions excluded from the initial suit(s). Only upon notice of MSPB appeal (Admin.-mixed) to Respondent was a criminal information transmiited alleging harassment against LTC C. H. Jacobus at the initial dismissal letter delivery. Subsequently Jacobus

(then retired and employed by Bell Helicopter Textron- a bidder on the LHX ,later Commanche, that he supervised the specifications documents for) testified that he was knocked off balance yet unbruised by Watts mere touch to his shoulder to gain his supposedly distracted attention as to the purpose of his silent mouthings and hand signals to the atypically armed MP trailing Watts after such meeting.

An offer to influence the U.S. Attorney to not prosecute based on such incident was proffered in exchange for abandoning administrative and EEOC appeal. The involved charge was under an Alabama statute (Harassment) converting mere touch, "striking", or speech

insufficient for a charge of assault or battery into a crime based upon an intent (as determined by the opinion of others) to harass alarm of annoy.

It should be noted that during such employment Watts made over thirty suggestions and proposals. At least one such proposal (Anti-rotorcraft) although claimed impossible to implement by the Army has since appeared in a patent by a Beltway firm. Another, after being denied as unworkable when submitted by Watts, was evidently cause for reward to the then Commander of the Directorate of Combat developments (Col. F. H. Mayer) at about the time of the aforementioned events. It was this individual who, during Administrative hearings, suggested that Watts should defect

if he thought his treatment unfair.

More crucial suggestion concerning the remote derangement of certain "so called" inertial guidance systems was supposedly not workable although easily demonstrable. Remotely inhibiting internal combustion engines by chemical means although then denied was later found to be "under development" by a private firm consulting with the retired Army Inspector General (Trefry) who had reviewed the original internal complaints about the misevaluation of such suggestions and proposals. Additional means of sabotaging threat or enemy long distance fuel transmission means with a low probability of detection was also denied after wide circulation around Ft. Rucker accompanied by alleged lack of

comprehension.

REASONS WHY THE PETITION FOR CERTIORARI SHOULD BE ISSUED

SUMMARY

The petition should be granted because the lower court's decisions sanction inequity on a partisan basis. The spectacle of an Independent counsel's assault upon a sitting President on the basis of hearsay and illegally obtained evidence contrasts revealingly with this sustained effort to maintain a judgment obtained by fraud upon the a federal court by government counsel.

Newly discovered evidence, systematically and repeatedly withheld, when finally obtained and along with previously submitted evidence incontrovertibly establishes such fraud. Under such circumstances the discretion

resulting in a Rule 60(b) motion denial:

"..is not an arbitrary one to be capriciously exercised but a sound legal discretion guided by accepted legal principles". *Assman v. Fleming,* 159 F.2d 336 (8th Cir 1947)

The Eleventh circuit's instant decision conflicts with that of itself, this court and other circuits.

The Eleventh Circuit and District Court mistate a Fed R. Civ. P. rule 60(b) motion from final judgement as a "motion for reconsideration" of a preceeding summary judgement order. Thus applicable discretion is not recognized and, a rule irrelevant to the fact and rules is relied upon.

REASONS FOR GRANTING THE PETITION

I. Equal protection of law is denied

when members of a particular class are not equally protected from the excesses of the Government's Justice system. A partisan charge of obstruction of justice is pursued upon a President favoring more progressive civil rights enforcement and other "moderate" causes is enabled by hearsay and even illegal "evidence". Petitioner and other citizens are denied relief from verdicts obtained by the fraud of Government Counsel (or pursuit of Government Counsel for obstruction of justice charges) in actions seeking effective enforcement of Civil Rights Law.

A telephonic deposition (in lieu of testimony by an appearance in court) was claimed to have been by a witness

located in Seoul, Korea. Upon provision of telephonic records (sought prior to the original summary judgment) no three-way conference call involving Seoul, Korea to Alexandria, VA and Atlanta, GA was evident as sworn to in such deposition by such Government counsel setting up such arrangement. Only a call from Alexandria, VA to Atlanta,GA was evident at the times stated in the deposition. Indeed no call to Korea was evident for the month and no conference call save to other locations on a different date.

Thus no individual alleged to be the subject witness in Korea could have taken part in such event as claimed. The initial District court virtually quoted the "facts" of such deposition

statements by such "Korea" located deponent in it's finding nullifuying the established inference of discrimination. Such statement articulated the "non-discriminatory " reasons for different treatment of Watts versus whites. An example is: overtime records showing all whites were paid overtime during such period when Watts was being supervised by such alleged deponent but not Watts.

A rule 60(b) motion for relief from judgment based on such newly discovered and prior evidence was denied but erroneously stated as being a " second motion for reconsideration of a summary judgment order". Such denial cited only, 1)the affirmance of a prior" Motion for reconsideration that was actually a

Fed R. Civ. P Rule 59 (absent the newly discovered evidence being filed with a motion to the district court) motion on appeal by the Eleventh Circuit and , 2)the mere fact of defendant government's counsel's response. Apparently the origin of such misapprehension of such Fed R. of Civil P. 60(b) motion as a "second motion for reconsideration of order for summary judgment" comes from the title of Defendant's response to such motion;

"DEFENDANT'S RESPONSE TO PLAINTIFF'S SECOND MOTION FOR RECONSIDERATION OF ORDER FOR SUMMARY JUDGMENT";

at appendix item AP4.

Despite the newly discovered evidence incontrovertibly establishing no such three party conference call was arranged by Government counsel as sworn, no effort to investigate or charge such government official or, even reverse the

fraudulently obtained verdict thus obtained is made on the part of the justice department or the federal judiciary.

But, in a case involving hearsay and illegally recorded hearsay , the Government vigorously pursues more evidence in pursuit of a party leader and opposition President deemed insufficiently "insensitive". The Independent Counsel Act cannot be proffered as excuse to favor the persecution of the Executive while the justice system itself ignores the misdeeds of it's own minions.

Here, government official's misconduct obstructing justice is eagerly pursued against democratic leadership supportive of effective civil rights

enforcement but ignored when it favors ordinary citizens pursuing similar such ends against fraudulent official conduct. But evidence of such behavior is ignored in one case although independently established by an electronic system of telephone toll (long distance) billings and records but accepted and expanded where it is based upon illegally recorded gossip. Apparently the difference can only lie in the primarily anti-effective civil rights enforcement partisan political stand of the party that the subject independent Counsel is affiliated with and it's present congressional majority.

Decisions not to prosecute (although here the lesser expedient of the correction of a fraudulently obtained

verdict is at issue) have been held by this court to be presumptively unreviewable in court , *because they involve judgments about priorities that may be fully understood only in the context of the full range of choices and resources available to the agency. Heckler v. Chaney* 470 U.S. 821. But here the avidity of prosecutorial zeal with respect to democratic leadership contrasts with the bedrock resistance to even overturn, let alone prosecute it's agent for obstruction of justice, a fraudulently obtained result against mere citizens lawfully seeking the effective vindication of such rights favored by such democratic leadership but opposed as to result by it's opposition.

Congress established the purpose of the Special Prosecutor (later the Independent) Counsel Act to

"preserve and promote the accountability and integrity of Public Officials and of the Institutions of the Federal Government and to reinvigorate the Constitutional separation of powers between the three Branches of Government." U.S.Code Cong. and Administrative News 1978, PP4216 Ethics in Government Act of 1978, Senate Report no. 95-170

Senate Report 97-496, Public Law 97-496 U.S. Code Congressional and Administrative News ,1982 pp 3537 cites amendments of the act to:

"insure public confidence in the impartial investigation of allegations of criminal conduct by higher ranking executive officers and members of the Presidential family and to remove inequities from the prosecution.".

But if lower level employees may confidently indulge such actions far in excess of those evidenced against such higher official with the free

permission granted by the discretion of the courts a corrupt lower level infrastructure is encouraged regardless of the selective partisan showmanship aimed at the higher levels. The effect is to deny justice and it's appearance at a maximal partisan level consistent with the existing congressional majority and the predominance of it's appointees within the judiciary. Indeed the purpose of such law is evaded even in the case of actual executive levels of corruption since a license to such conduct by the lower levels allows such conduct to be there transferred as perceived desired by the leadership.

Under such conditions, the discretion granted the district court to deny a

Rule 60(b) motion, with such evidence both newly discovered and already submitted, can only undermine the purpose for which the Independent Counsel And Ethics in Government Act was made law. Nor is the purpose of the Fed. R. of Civ.P. in general scope or particular rule thus served.

The federal judiciary making such decisions is abetted by the justice department in that such counsel work with the agency upon such responses and were served such evidence as their responding documents within the record of this case demonstrate. Appendix AP4.

Thus the equal protection and due process clauses of the 5th and 14th Amendment to the Constitution are invoked., While the equal protection clause of the Fourteenth amendment does

not apply to actions of the federal government, **Federal** classifications however that would contravene the equal protection clause if they were state classifications ,violate the due process clause of the fifth amendment. *Boling v. Sharpe*, 347 U.S. 497, 499 (1954); *Weinberger v. Wisenfeld*, 420 U.S. 636, 638 n.2 (1975).

Equal protection requires that people who are similarly situated be treated similarly. *Hagans v. Lavine*, 415 U.S. 528, 538-39 (1974); *Silva v. Vowell*, 621 F.2d 640, 647 (5th Cir. 1980), *Cert. denied*, 449 U.S. 1125 (1981). The equal protection clause applies to administrative classifications (*See Buckley v. Coyle Pub. School Sys*, 476 F.2d 92,96 (10th Cir. 1973)- administrative policy of dismissal of

school teachers at sixth month of pregnancy) as well as legislative classifications (*See Cabal v. Chavez-Salido*. 454 U.S. 432, 434 (1982); *Jones v. Helms*,452 U.S. 412, 423-24 (1981); *United States Department of Agriculture v. Moreno*, 413 U.S. 528, 533 (1973).

II. Use of an improper factor, law or, misinterpretation of rules in reaching a discretionary decision is held as cause for finding an abuse of discretion almost universally among the circuits and this court.

Failure to recognize that discretion or choice is available (thus assuming that the court is bound by some rule not admitting such choice) is grounds for abuse of discretion. *See Bradford Brown*

v. *United States,* 372 A.2d 557,559 Cert Denied 434 US 921, 98 S Ct. 397, 54 L .Ed 278 (1977). Here the district court states what rule it assumes to exclude the exercise of discretion erroneously designating a Fed R,. Civ. P 60 (b) motion for relief from final judgment as a motion for reconsideration of a summary judgment order preceding such final judgment. AP3. The Eleventh Circuit fails to find abuse of discretion by preserving such misapprehension and states that the choice made (with other and improper cause specifically cited by the District court) is within the district court's discretion. AP2. What is the effect of licensing such error ? This court has stated that:

Discretion without a criteria for it's exercise is authorization for arbitrariness." Brown v. Allen, 344 U.S.

443,496, 73 S.Ct. 397,441, 97 L.Ed. 469(1953).

Clearly, the Eleventh Circuit disagrees by:

1) Excusing the lower courts failure to recognize it had discretion and:

2) Failing to find abuse when improper factors were considered and employed.

Motions for reconsideration of a final judgment have been construed as a Fed. R. Civ. P Rule 59 or 60 (b) motion depending on it's filing date relative to a final judgment and grounds. *Moore's Fed Rules of Civil Procedure* , Rules 59,60 pp 667,668. Rationale for generalizing a specific 60(b) motion for relief from judgment, including a basis of newly discovered evidence, to a "motion for reconsideration" enables "mistaking " such motion for one from the

summary judgment order. But, motions for reconsideration of such order are limited to a 10 day period after entry of order. Local Rule 7.2 E. By accepting the motion it was recognized by the court as not being a motion for reconsideration of a summary judgment order made several months earlier. Yet, the district court states it perceives the motion as a " motion for reconsideration of the summary judgement order", as it's basis for denial. Such misapprehension apparently comes from government counsel's response to such Rule 60(b) motion as:

"DEFENDANT'S RESPONSE TO PLANTIFF'S SECOND MOTION FOR RECONSIDERATION OF ORDER FOR SUMMARY JUDGMENT".

Nor is this the first such non-randomly distributed error, invariably aiding

government counsel, sustained by the Eleventh Circuit in shielding the questionable acts of government counsel. The initial cause in this series found such shielding via the less direct method of holding appeal premature and upon later completion of the act stated necessary for appeal to proceed , as being filed in the wrong forum after government notice to a wrong address despite notice of change of address. By such means, addressing the misrepresented and falsified citation of government counsel' Appellee's brief (*Watts v. Marsh*, Eleventh Circuit No. 88-7511) as detailed in Appellant's reply brief was evaded as was review of the merits of litigation involving staged incident climaxing in dismissal amid a

threat of lethal force stoked by traditional false racist sterotypical "Black rape of a white woman" vitriol, after a series of escalating adverse acts that were while initially admitted improper, doggedly pursued with increasingly more subtlety, care and, dissembly.

Respondent was the first black employed as an Aerospace Engineer and a graduate of reputable and accredited school of such Engineering (in a force which the initial response to a recent partially fulfilled FOIA requests -1997- reveals remains virtually lily white) at Ft. Rucker).

A judiciary displaying such selectively arbitrary treatment and "alleged" error ever beneficial of government interests defeats the purpose for which it was

established. Such arbitrariness in service of government "legal" misconduct is characteristic of the evils that the Constitution and Magna Carta were established to remedy. Due Process, Equal Protection and Right of Access are thus denied.

Equality under law limits the excesses of hierarchy and class (here inevitably intertwined with race) thus encouraging greater innovation contributing to a technological base of greater economic efficiency and military effectiveness. Thus such inequitable treatment is not only unconstitutional and a violation of expressed Congressional intent, purpose and the "Appearnce of a Justice" , but also inhibits innovation in

preference to maintenance of hierarchy by deceit- thus undermining the technological effectiveness that supports the economic and military effectiveness necessary to the preservation of the society and it's judicary.

CONCLUSION

For the foregoing reasons, petition for certiorari should be granted. The decision by the involved panel should be reversed. The actual issues raised on appeal should be given full hearing and the underlying decision reversed so that the requested relief is granted.

Respectfully submitted

(Plaintiff, Appellant
and Petitioner)
P.O. Box 82123
Atlanta, GA 30354
404-622-3195

APPENDIX

1. IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 96-9082
Non-Argument Calendar

BERMAN J. WATTS, JR.

Plaintiff-Appellant

versus

TOGO D. WEST, JR., et al.,

Defendant-Appellee.

Appeal from the United States District Court for the Northern District of Georgia

---

(June 11, 1997)

Before DUBINA, CARNES , and BARKETT, Circuit Judges,

PER CURIAM:

Berman Watts appeals the district court's denial of his motion for reconsideration of the denial of his independent action for relief from judgment on his employment discrimination suit. Because the district court did not abuse it's discretion in denying the motion, we affirm.

AFFIRMED.

AP2
Date stamped JAN 22 1998

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 96-9082
Non-Argument Calendar

BERMAN J. WATTS, JR.

Plaintiff-Appellant

versus

TOGO D. WEST, JR., et al.,

Defendant-Appellee.

On Appeal from the United States District Court for the Northern District of Georgia

---

ON PETITION FOR REHEARING AND SUGGESTION(S) FOR REHEARING EN BANC

(Opinion _____, 11th Cir., 19__, _____F.2d_____).

Before: DUBINA, CARNES, and BARKETT, Circuit Judges.

PER CURIAM:
The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the

Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of appellate procedure; Eleventh Circuit Rule 35-5, the Suggestion(s) of Rehearing En Banc are Denied.

ENTERED FOR THE COURT:

Signed E. D. CARNES (?)
UNITED STATES CIRCUIT JUDGE

ORD-42
(6/95)
AP2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

BERMAN J. WATTS, JR.	:	
	:	
	:	
VS.	:	CIVIL NO.1
	:	:95-CV-114-ODE
	:	
TOGO D. WEST JR.and/	:	
or his predecessor	:	
MICHAEL P.W. STONE	:	
and/ JOHN O. MARSH,	:	
JR.,Secretary of the	:	
Army; DEPARTMENT OF	:	
THE ARMY,	:	
Headquarters United	:	
States Army Aviation	:	
Center, Ft. Rucker,	:	
Headquarters Tradoc,	:	
Directorate of Combat	:	
Developments, Ft.	:	
Monroe, United States	:	
Army Civilian	:	
Training Education	:	
and Development	:	
Student Detachment	:	

ORDER

This civil action, in which Plaintiff requests that the court overturn a judgment of the United States District Court for the Middle District of Alabama on the ground that the government introduced a fraudulent deposition during a bench trial before the Alabama court,

currently before the court on Plaintiff's second motion to reconsider. Defendants have responded to the motion.

Plaintiff urges the court to reconsider its April 27, 1995 order that granted summary judgment to the Defendant. That order was entered because Plaintiff failed to produce any evidence that a reasonable juror could rely on to find in his favor.

Plaintiff argues that the court should reconsider its April 27,1995 order because the record, additional evidence, law and authorities do not support it.

Having considered the motion , the court finds that the motion should be denied.

Accordingly, Plaintiff's motion to reconsider [#13-1] is DENIED.

SO Ordered, this 16 day of July, 1996.

signed ORINDA D. EVANS
UNITED STATES DISTRICT JUDGE

1. This court denied Plaintiff's first motion to reconsider. That denial was affirmed by the Eleventh Circuit.

AP4

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

BERMAN J. WATTS	:	
Plaintiff,	:	CIVIL ACTION
VCR.	:	NO. 1:95-cv-114-ODE
TOGO D. WEST,	:	
et al.,	:	
Defendants,	:	

DEFENDANT'S RESPONSE TO PLAINTIFF'S SECOND MOTION FOR RECONSIDERATION OF ORDER FOR SUMMARY JUDGMENT

Defendants oppose plaintiff's second motion for reconsideration of this Court's order granting defendant's summary judgment. The eleventh Circuit has affirmed both this Court's order granting defendant's motion for summary judgment and the Court's order denying plaintiff's first motion for reconsideration. Plaintiffs second motion for reconsideration should be denied.

Respectfully submitted,

KENT B. ALEXANDER
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ASSISTANT UNITES STATES ATTORNEY

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